



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

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OFFICE OF  
ENVIRONMENTAL  
CLEANUP

February 22, 2018

Loren Cohen, Project Manager  
Point Ruston, LLC  
5219 N. Shirley Street, Suite 100  
Ruston, WA 98407

RE: Commencement Bay Nearshore/Tideflats Superfund Site  
Asarco Tacoma Smelter Third Amended Consent Decree Between the United States and  
Point Ruston, LLC

Dear Mr. Cohen:

This letter is in response to a number of recent schedule extension requests and other issues for various areas which must be handled in accordance with the terms and conditions of the Third Amended Consent Decree. Several of these requests were schedule changes sent by your contractor as design addendums to various phases of the work. As you are aware, under Section X, paragraph 53, and Section XVIII, paragraph 77 of the Third Amended Consent Decree, it is inappropriate to request a schedule extension pursuant to a design addendum submitted by your contractor. In the future, all requests for schedule extensions must be submitted by principals of Point Ruston, LLC, and addressed as requests to amend the Third Amended Consent Decree referencing the CMP Phase. Notwithstanding the fact that the proposed schedule changes were improperly submitted, EPA will address those schedule changes that have been submitted by Hydrometrics, Inc., through this letter.

A recent request was submitted from Mr. Greg Lorensen, Hydrometrics, Inc., in a Memorandum dated January 29, 2018, to extend the schedule from February 28, 2018, to April 30, 2018, for Building 6 (Parcel H) Remedial Action as an amendment to Design Addendum #3 for Phase 3. Since this request did not provide sufficient information as required in Section XVIII, paragraph 77 of the Third Amended Consent Decree, EPA is denying the extension request.

EPA also received an email from Mr. Greg Lorensen, Hydrometrics, Inc., on February 1, 2018, requesting an extension of the schedule for excavation in the Yacht Basin from October 31, 2017, to December 31, 2024. Since Point Ruston, LLC, was unable to perform this work in 2017 due to ongoing construction in the uplands by Metro Parks Tacoma, EPA agrees that a schedule extension is appropriate in accordance with Section XVIII, paragraph 78. Since the final construction of the uplands will preclude Point Ruston from fulfilling its obligations from the land, EPA is extending the schedule for this work to be completed until December 31, 2024.

In a Memorandum dated January 22, 2018, Hydrometrics, Inc. proposed utilizing Lot 10 as a Parking Area for construction workers as Addendum #10 to the Phase 2 CMP. EPA has discussed this proposal with the City of Ruston and EPA approves of this area being used for temporary parking for construction workers under the following stipulations:

1. The fence between Ruston Way and Lot 10 that currently exists along the Right of Way will remain in place;
2. The parking area will remain secure and prevent public access;
3. Point Ruston, LLC will obtain the required permits for grading the parking lot area;
4. There may be a monitoring well in front of the access gate that will need to be moved or decommissioned; and
5. The car tunnel will be filled and capped prior to occupation of the parking lot.

Further, in a meeting on January 17, 2018, Point Ruston, LLC proposed moving approximately 20,000 cubic yards from the stockpile of contaminated soil in Lot 15 (MMZ) to be capped on the OCF. EPA has considered this proposal and does not support the proposed OCF expansion, but would like to propose a less impactful alternative of grading and capping this material in Lot 15 (MMZ) under the building 15 footprint. We understand that this would increase the overall building height as it would change the base grade of the building, but consider the environmental impacts of moving the soil to be far less by allowing the contaminated soils to remain in Lot 15. Preliminary discussions with the City of Ruston indicates that they are amenable to this change. EPA is willing to work with Point Ruston in getting the appropriate approvals by the Cities of Ruston and Tacoma. Point Ruston must submit a change to the Master Grading Plan (part of the Master Development Plan) adjusting the final grading height of Building 15 by December 31, 2018.

Additionally, EPA is also clarifying in this letter that the approved schedule extension of the first 3 parcels (Buildings 5, 6, and 7) that had a completion date in the Third Amended Consent Decree of December 31, 2017, are extended to September 30, 2018 (Building 5), February 28, 2018 (Building 6), and August 31, 2019 (Building 7), respectively, in accordance with Section XVIII, paragraph 78, as there was record rainfall (occurrence and duration) between October 2016 and April 2017, which EPA agrees in those instances constituted force majeure in accordance with Section XVIII, paragraph 76 of the Third Amended Consent Decree.

Lastly, EPA's review of the Third Amended Consent Decree indicates that Point Ruston, LLC is not in compliance as set out below, and as a result stipulated penalties are accruing accordance with Section XX:

1. Section VI, Paragraph 30 of the Third Amended Consent Decree states, "Point Ruston has already received certain EPA approvals associated with the Remedial Design. Point Ruston shall meet the requirements for the Remedial Action specified in the RODs, the SOW and all Remedial Designs approved by EPA." This is referring to Phase 1, 2 and 3 CMPs. Phase 1 CMP had a construction completion date of December 31, 2009, yet the construction of the entire area to be completed provided in the Phase 1 CMP has not been completed and EPA does not have any record that Point Ruston, LLC has modified this schedule pursuant to Section XXXI, paragraph 123. Likewise, the Phase 2 CMP had a construction completion date of June 30, 2015, yet the construction of the entire area to be completed provided in the Phase 2 CMP has not been completed and EPA does not have any record that Point Ruston, LLC has modified this schedule pursuant to Section X, paragraph 49 and Section XXXI, paragraph 123.

2. Section VI, Paragraph 30a states, "Within 60 days after EPA's issuance of an authorization to proceed pursuant to Paragraph 29 of this Decree, Point Ruston shall submit to EPA and the State a schedule for preparation of CMPs for the remainder of the Work at the site." EPA does not have a record of a schedule to prepare CMPs for the remainder of the Work at the site, which encompasses all areas of the site outside of Phase 1, Phase 2, and Phase 3 CMPs.
3. Section VI, Paragraph 30b states, "Point Ruston shall submit to EPA and the State all CMPs and other remedial design deliverables in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions) of this Consent Decree." Paragraph 31b states, "Point Ruston shall prepare CMPs for the Remedial Action, which may include a schedule for implementation of the Remedial Action in Phases, pursuant to Paragraph 30.c above." EPA does not have a record of any additional CMPs being submitted for the remainder of the Work at the site, including those covered under Paragraph 30c.
4. Section IX, Paragraph 47d states, "d. Point Ruston shall give written notice to EPA of its intent to transfer any interest in the property at least thirty (30) days prior to the anticipated transfer date. The notice shall include the proposed conveyance documents. EPA reserves the right to approve the conveyance language as it relates to the covenants, conditions and restrictions to ensure that the language is consistent with this Consent Decree." EPA has learned that Point Ruston LLC sold lot 17 to the Silver Cloud on May 4, 2017. EPA verified this information with the Pierce County Assessors. EPA does not have any record of this property transfer.

Point Ruston, LLC shall schedule a meeting with EPA within 14 days of receipt of this letter to discuss the RA construction schedule, CMPs, and progress reports in order to remedy these violations of the Third Amended Consent Decree. Please contact Kristine Koch, EPA Project Manager, if you have any questions or concerns regarding this letter and to set up meetings to discuss the contents of this letter. She can be reached by phone at (206) 553-6705 or by email at [koch.kristine@epa.gov](mailto:koch.kristine@epa.gov).

Sincerely,



Sheryl Bilbrey, Director  
Office of Environmental Cleanup

cc: Rodney Brown, Cascadia Law Group, PLLC

